

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0978-PST-E TCEQ ID: RN101880219 CASE NO.: 33879
RESPONDENT NAME: JAMES J. FLANAGAN SHIPPING CORPORATION
DBA JAMES J. FLANAGAN STEVEDORES

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 1111 E. Navigation Blvd., Houston, Harris County

TYPE OF OPERATION: shipping corporation

SMALL BUSINESS: ☐ Yes ☒ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired July 8, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Rudy Calderon, Litigation Division, MC 175, (512) 239-0205
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Mr. Tom Jecha, Waste Enforcement Section, MC 128, (512) 239-2576

TCEQ Regional Contact: Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623

Respondent: Mr. James Flanagan, III, Vice-President, 1111 E. Navigation Blvd., Houston, Texas, 77012

Respondent's Attorney: Mr. James Davin, Julian & Seele, P.C., 11767 Katy Frwy, Suite 350, Houston, Texas 77079-1716

RESPONDENT NAME: JAMES J. FLANAGAN SHIPPING CORPORATION
DBA JAMES J. FLANAGAN STEVEDORES
DOCKET NO.: 2007-0978-PST-E

Page 2 of 2

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p> <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review </p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 16, 2007</p> <p>Date of NOE Relating to this Case: August 20, 2007</p> <p>Background Facts: The EDRP was filed January 3, 2008. The Respondent filed an answer and the case was referred to SOAH. A signed Agreed Order was received on April 13, 2009.</p> <p>Current Compliance Status: The Respondent is not yet in compliance. The Respondent does not have a delivery certificate.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to provide a method of release detection capable of detecting a release from any portion of the UST system which contained regulated substances [30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)]. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)]. Failed to have the UST records maintained, readily accessible, and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)]. Failed to submit the required UST registration and self-certification form to the agency [30 TEX. ADMIN. CODE §§ 334.8(c)(4)(A)(vi) and 334.7(d)(3)]. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)]. 	<p>Initial Calculated Penalty: \$8,000</p> <p>Total Assessed: \$8,000</p> <p>Total Deferred: \$0</p> <p> <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset </p> <p>Total Paid/Due to General Revenue: \$410/\$7,590</p> <p>The Respondent paid \$410 of the administrative penalty. The remaining amount of \$7,590 shall be payable in 23 monthly payments of \$330 each.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor </p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor </p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ. Within 30 days: <ol style="list-style-type: none"> Install and implement a release detection method for the USTs; Obtain acceptable financial assurance for taking corrective action and for compensating third parties for both bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and Begin maintaining all UST records. Within 45 days, submit written certification demonstrating compliance with these Ordering Provisions.



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 25, 2007

DATES	Assigned	5-Jun-2007	Screening	12-Jun-2007	EPA Due	
	PCW	24-Oct-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	James J. Flanagan Shipping Corporation dba James J. Flanagan Stevedores
Reg. Ent. Ref. No.	RN101880219
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	33879	No. of Violations	5
Docket No.	2007-0978-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Philip DeFrancesco
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$8,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes	No adjustment due to compliance history
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Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes	The respondent does not meet the culpability criteria.
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Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
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Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes	The respondent does not meet the good faith criteria.
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Total EB Amounts	\$1,530	0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$3,100	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$8,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Adjustment	\$0
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Notes	
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Final Penalty Amount	\$8,000
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STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty	\$8,000
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DEFERRAL

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

0% Reduction	Adjustment	\$0
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Notes	Deferral not offered for non-expedited settlement
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PAYABLE PENALTY	\$8,000
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Screening Date 12-Jun-2007

Docket No. 2007-0978-PST-E

PCW

Respondent James J. Flanagan Shipping Corporation dba James J. F

Policy Revision 2 (September 2002)

Case ID No. 33879

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN101880219

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip DeFrancesco

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No adjustment due to compliance history

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 12-Jun-2007		Docket No. 2007-0978-PST-E		PCW						
Respondent James J. Flanagan Shipping Corporation dba James J. Flanagan				<i>Policy Revision 2 (September 2002)</i>						
Case ID No. 33879				<i>PCW Revision May 25, 2007</i>						
Reg. Ent. Reference No. RN101880219										
Media [Statute] Petroleum Storage Tank										
Enf. Coordinator Philip DeFrancesco										
Violation Number		<div style="border: 1px solid black; width: 100px; text-align: center;">1</div>								
Rule Cite(s)		<div style="border: 1px solid black; padding: 5px;">30 Tex. Admin. Code § 334.50(a)(1)(A) and Tex. Water Code § 26.3475(c)(1)</div>								
Violation Description		<div style="border: 1px solid black; padding: 5px;">Failed to provide a method of release detection capable of detecting a release from any portion of the UST system which contained regulated substances.</div>								
Base Penalty					<div style="border: 1px solid black; width: 100px; text-align: right;">\$10,000</div>					
>> Environmental, Property and Human Health Matrix										
OR	Harm									
	Major	Moderate	Minor							
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33.33%;">Release Actual</td> <td style="width: 33.33%;"></td> <td style="width: 33.33%;"></td> </tr> <tr> <td>Potential</td> <td style="text-align: center;">x</td> <td></td> </tr> </table>			Release Actual			Potential	x		Percent <div style="border: 1px solid black; width: 50px; text-align: center;">25%</div>
Release Actual										
Potential	x									
>> Programmatic Matrix										
Matrix Notes	Falsification									
	Major	Moderate	Minor							
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33.33%;"></td> <td style="width: 33.33%;"></td> <td style="width: 33.33%;"></td> </tr> </table>						Percent <div style="border: 1px solid black; width: 50px; text-align: center;">0%</div>			
Failing to monitor the UST system for releases could expose human health or the environment to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.										
Adjustment					<div style="border: 1px solid black; width: 100px; text-align: right;">\$7,500</div>					
					<div style="border: 1px solid black; width: 100px; text-align: right;">\$2,500</div>					
Violation Events										
Number of Violation Events		<div style="border: 1px solid black; width: 100px; text-align: center;">1</div>								
		<div style="border: 1px solid black; width: 100px; text-align: center;">27</div>		Number of violation days						
mark only one with an x	daily	<div style="border: 1px solid black; width: 50px;"></div>								
	monthly	<div style="border: 1px solid black; width: 50px;"></div>								
	quarterly	<div style="border: 1px solid black; width: 50px; text-align: center;">x</div>								
	semiannual	<div style="border: 1px solid black; width: 50px;"></div>								
	annual	<div style="border: 1px solid black; width: 50px;"></div>								
	single event	<div style="border: 1px solid black; width: 50px;"></div>								
One quarterly event is recommended based on documentation of the violation during the May 16, 2007 investigation date to the June 12, 2007 screening date.					Violation Base Penalty <div style="border: 1px solid black; width: 100px; text-align: right;">\$2,500</div>					
Economic Benefit (EB) for this violation			Statutory Limit Test							
Estimated EB Amount <div style="border: 1px solid black; width: 100px; text-align: right;">\$50</div>			Violation Final Penalty Total <div style="border: 1px solid black; width: 100px; text-align: right;">\$2,500</div>							
This violation Final Assessed Penalty (adjusted for limits)					<div style="border: 1px solid black; width: 100px; text-align: right;">\$2,500</div>					

Economic Benefit Worksheet

Respondent James J. Flanagan Shipping Corporation dba James J. Flanagan Stevedores

Case ID No. 33879

Reg. Ent. Reference No. RN101880219

Media Petroleum Storage Tank

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,500	16-May-2007	16-Jan-2008	0.7	\$50	n/a	\$50

Notes for DELAYED costs

The estimated cost to provide a release detection method for the UST system. The date required is the investigation date and the final date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$50

Screening Date 12-Jun-2007

Docket No. 2007-0978-PST-E

PCW

Respondent James J. Flanagan Shipping Corporation dba James J. Flanagan &

Policy Revision 2 (September 2002)

Case ID No. 33879

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN101880219

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip DeFrancesco

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 37.815(a) and (b)

Violation Description

Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2

365 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$2,000

Two single events are recommended for the two USTs at the Facility.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,365

Violation Final Penalty Total \$2,000

This violation Final Assessed Penalty (adjusted for limits) \$2,000

Economic Benefit Worksheet

Respondent James J. Flanagan Shipping Corporation dba James J. Flanagan Stevedores

Case ID No. 33879

Reg. Ent. Reference No. RN101880219

Media Petroleum Storage Tank

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]	\$1,300	16-May-2006	16-May-2007	1.0	\$65	\$1,300	\$1,365
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for two petroleum USTs (at \$650 per tank) for the 12 month period preceding the date of investigation.

Approx. Cost of Compliance

\$1,300

TOTAL

\$1,365

Screening Date 12-Jun-2007		Docket No. 2007-0978-PST-E		PCW																	
Respondent James J. Flanagan Shipping Corporation dba James J. Flanagan &				<i>Policy Revision 2 (September 2002)</i>																	
Case ID No. 33879				<i>PCW Revision May 25, 2007</i>																	
Reg. Ent. Reference No. RN101880219																					
Media [Statute] Petroleum Storage Tank																					
Enf. Coordinator Philip DeFrancesco																					
Violation Number		<input type="text" value="3"/>																			
Rule Cite(s)		<input type="text" value="30 Tex. Admin. Code § 334.10(b)"/>																			
Violation Description		<input type="text" value="Failed to have the UST records maintained, readily accessible, and make them immediately available for inspection upon request by agency personnel."/>																			
Base Penalty				<input type="text" value="\$10,000"/>																	
>> Environmental, Property and Human Health Matrix																					
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td colspan="3" style="text-align: center;">Harm</td> </tr> <tr> <td style="text-align: center;">Release</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td style="text-align: center;">Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>					Harm			Release	Major	Moderate	Minor	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>
		Harm																			
	Release	Major	Moderate	Minor																	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>																		
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>																		
>> Programmatic Matrix																					
Matrix Notes	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Falsification</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td></td> <td><input type="text"/></td> <td style="text-align: center;">x</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>					Falsification	Major	Moderate	Minor		<input type="text"/>	x	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>						
		Falsification	Major	Moderate	Minor																
		<input type="text"/>	x	<input type="text"/>	<input type="text"/>																
<input type="text" value="100% of the rule requirement was not met."/>																					
Adjustment				<input type="text" value="\$9,000"/>																	
				<input type="text" value="\$1,000"/>																	
Violation Events																					
Number of Violation Events <input type="text" value="1"/>		<input type="text" value="27"/> Number of violation days																			
mark only one with an x	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$1,000"/>																		
	monthly	<input type="text"/>																			
	quarterly	<input type="text"/>																			
	semiannual	<input type="text"/>																			
	annual	<input type="text"/>																			
	single event	x																			
<input type="text" value="One single event is recommended based on documentation of the violation during the May 16, 2007 investigation."/>																					
Economic Benefit (EB) for this violation			Statutory Limit Test																		
Estimated EB Amount <input type="text" value="\$3"/>		Violation Final Penalty Total <input type="text" value="\$1,000"/>																			
This violation Final Assessed Penalty (adjusted for limits)			<input type="text" value="\$1,000"/>																		

Economic Benefit Worksheet**Respondent** James J. Flanagan Shipping Corporation dba James J. Flanagan Stevedores**Case ID No.** 33879**Reg. Ent. Reference No.** RN101880219**Media** Petroleum Storage Tank**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$100	16-May-2007	16-Jan-2008	0.7	\$3	n/a	\$3
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain UST records. The date required is the investigation date and the final date is the estimated date of compliance.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs**Approx. Cost of Compliance**

\$100

TOTAL

\$3

PCW

Screening Date 12-Jun-2007

Docket No. 2007-0978-PST-E

Policy Revision 2 (September 2002)

Respondent James J. Flanagan Shipping Corporation dba James J. Flanagan &

PCW Revision May 25, 2007

Case ID No. 33879

Reg. Ent. Reference No. RN101880219

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip DeFrancesco

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 334.8(c)(4)(A)(vi) and 334.7(d)(3)

Violation Description Failed to submit the required UST registration and self-certification form to the agency.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

27 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the May 16, 2007 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

Economic Benefit Worksheet

Respondent: James J. Flanagan Shipping Corporation dba James J. Flanagan Stevedores

Case ID No. 33879

Reg. Ent. Reference No. RN101880219

Media: Petroleum Storage Tank

Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$100	16-May-2007	16-Jan-2008	0.7	\$3	n/a	\$3
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit a completed UST registration and self-certification form to the TCEQ. The date required is the investigation date and the final date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$3

Screening Date 12-Jun-2007

Docket No. 2007-0978-PST-E

PCW

Respondent James J. Flanagan Shipping Corporation dba James J. Flanagan &

Policy Revision 2 (September 2002)

Case ID No. 33879

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN101880219

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip DeFrancesco

Violation Number 5

Rule Cite(s)

30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a)

Violation Description

Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, review of the Facility's fuel delivery invoice indicated that the Facility had received three deliveries of a regulated substance without a delivery certificate.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 3

27 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,500

Three single events are recommended for accepting three fuel deliveries without a delivery certificate.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$108

Violation Final Penalty Total \$1,500

This violation Final Assessed Penalty (adjusted for limits) \$1,500

Economic Benefit Worksheet**Respondent** James J. Flanagan Shipping Corporation dba James J. Flanagan Stevedores**Case ID No.** 33879**Reg. Ent. Reference No.** RN101880219**Media** Petroleum Storage Tank**Violation No.** 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs**Avoided Costs****ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)	\$100	16-May-2007	16-Jan-2008	1.6	\$8	\$100	\$108

Notes for AVOIDED costs

Estimated cost to obtain a TCEQ delivery certificate. The date required is the investigation date and the final date is the estimated date of compliance.

Approx. Cost of Compliance

\$100

TOTAL

\$108

Compliance History

Customer/Respondent/Owner-Operator:	CN601025018 James J Flanagan Shipping Corp dba James J Flanagan Stevedores	Classification: AVERAGE BY DEFAULT	Rating: 3.01
Regulated Entity:	RN101880219 JAMES J FLANAGAN STEVEDORES	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		48086
Location:	1111 E NAVIGATION BLVD, HOUSTON, TX, 77012	Rating Date: September 01 06	Repeat Violator: NO
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	May 22, 2007		
Agency Decision Requiring Compliance History:	Information Request		
Compliance Period:	September 01, 2001 to August 31, 2006		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	N/A	Phone:	N/A

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING JAMES J.
FLANAGAN SHIPPING
CORPORATION DBA JAMES J.
FLANAGAN STEVEDORES;
RN101880219**

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§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-0978-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding James J. Flanagan Shipping Corporation dba James J. Flanagan Stevedores ("James J. Flanagan Stevedores") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and James J. Flanagan Stevedores, represented by James M. Davin of the law firm of Julian & Seele, P.C., appear before the Commission and together stipulate that:

1. James J. Flanagan Stevedores operates a shipping corporation located at 1111 E. Navigation Blvd., Houston, Harris County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and James J. Flanagan Stevedores agree that the Commission has jurisdiction to enter this Agreed Order, and that James J. Flanagan Stevedores is subject to the Commission's jurisdiction.
4. James J. Flanagan Stevedores received notice of the violations alleged in Section II ("Allegations") on or about August 25, 2007.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by James J. Flanagan Stevedores of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of eight thousand dollars (\$8,000.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). James J. Flanagan Stevedores paid four hundred ten dollars (\$410.00) of the administrative penalty. The remaining amount of seven thousand five hundred ninety dollars (\$7,590.00) of the administrative penalty shall be payable in 23 monthly payments of three hundred thirty dollars (\$330.00) each, pursuant to 30 TEX. ADMIN. CODE § 70.9(a). The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If James J. Flanagan Stevedores fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, James J. Flanagan Stevedores' failure to meet the payment schedule of this Agreed Order constitutes the failure by James J. Flanagan Stevedores to timely and satisfactorily comply with all of the terms of this Agreed Order.
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and James J. Flanagan Stevedores agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that James J. Flanagan Stevedores has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

During an investigation conducted on May 16, 2007, a TCEQ Houston Regional Office investigator documented that James J. Flanagan Stevedores violated:

- a. 30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), by failing to provide a method of release detection capable of detecting a release from any portion of the UST system which contained regulated substances.
- b. 30 TEX. ADMIN. CODE § 37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.
- c. 30 TEX. ADMIN. CODE § 334.10(b), by failing to have the UST records maintained, readily accessible, and make them immediately available for inspection upon request by agency personnel.
- d. 30 TEX. ADMIN. CODE §§ 334.8(c)(4)(A)(vi) and 334.7(d)(3), by failing to submit the required UST registration and self-certification form to the agency.
- e. 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs.

III. DENIALS

James J. Flanagan Stevedores generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that James J. Flanagan Stevedores pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and James J. Flanagan Stevedores' compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: James J. Flanagan Shipping Corporation dba James J. Flanagan Stevedores, Docket No. 2007-0978-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. James J. Flanagan Stevedores shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, James J. Flanagan Stevedores shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ, in accordance with 30 TEX. ADMIN. CODE § 334.8;
 - b. Within 30 days after the effective date of this Agreed Order, James J. Flanagan Stevedores shall:
 - i. install and implement a release detection method for the USTs, in accordance with 30 TEX. ADMIN. CODE § 334.50;
 - ii. obtain acceptable financial assurance for taking corrective action and for compensating third parties for both bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in accordance with 30 TEX. ADMIN. CODE § 37.815(a) and (b); and
 - iii. begin maintaining all UST records, in accordance with 30 TEX. ADMIN. CODE § 334.10.
 - c. Within 45 days after the effective date of this Order, James J. Flanagan Stevedores shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b.iii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information,

including the possibility of fine and imprisonment for knowing violations.”

James J. Flanagan Stevedores shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b.iii. to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and

Nicole Bealle, Waste Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

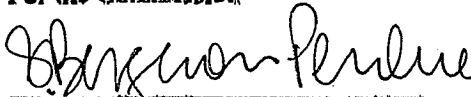
3. The provisions of this Agreed Order shall apply to and be binding upon James J. Flanagan Stevedores. James J. Flanagan Stevedores is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If James J. Flanagan Stevedores fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, James J. Flanagan Stevedores' failure to comply is not a violation of this Agreed Order. James J. Flanagan Stevedores shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. James J. Flanagan Stevedores shall notify the Executive Director within seven days after James J. Flanagan Stevedores becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by James J. Flanagan Stevedores shall be made in writing to the Executive Director. Extensions are not effective until James J. Flanagan Stevedores receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against James J. Flanagan Stevedores in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to James J. Flanagan Stevedores, or three days after the date on which the Commission mails notice of the Order to James J. Flanagan Stevedores, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

6/5/2009

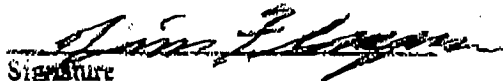
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on James J. Flanagan Stevedores' compliance history;
- Greater scrutiny of any permit applications submitted by James J. Flanagan Stevedores;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against James J. Flanagan Stevedores;
- Automatic referral to the Attorney General's Office of any future enforcement actions against James J. Flanagan Stevedores; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

4-17-09
Date

JIM FLANAGAN
Name (Printed or typed)
Authorized representative of
James J. Flanagan Shipping Corporation
dba James J. Flanagan Stevedores

V. P.
Title